

APPEAL NO. 010981
FILED JUNE 12, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 17, 2001. The hearing officer resolved the disputed issues by determining the following:

1. the date of injury in the course and scope of employment was _____;
2. the employer's workers' compensation insurance coverage provided by the respondent (carrier) was terminated on July 1, 2000;
3. the appellant (claimant) did not sustain a compensable injury; and
4. the claimant did not have disability as a result of the claimed injury.

The claimant has appealed the date of injury finding, asserting that the evidence supports the date of _____, as the date of injury. The carrier urges affirmance.

DECISION

The hearing officer's decision is affirmed.

The evidence sufficiently supports the challenged finding that the claimant sustained an injury on _____. While the evidence was in conflict, the hearing officer is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer, as the finder of fact, to resolve the inconsistencies and conflicts in the evidence, including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel will not disturb a challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the hearing officer's determination that the claimant's date of injury is _____.

The claimant also advances a new argument on appeal, contending that if the Appeals Panel affirms the date of injury as _____, then he is entitled to workers' compensation benefits because Sections 406.007(c) and 406.008(a) provide a 30-day notice provision in order for termination or cancellation of workers' compensation insurance policies to become effective. The claimant's argument is without merit as it pertains to Sections 406.007(c) and 406.008(a).

Section 406.007(c) refers to termination of workers' compensation insurance coverage *by an employer* and provides that the "[t]ermination of coverage takes effect on

the later of: (1) the 30th day after the date of filing of notice with the commission under Subsection (a); or (2) the cancellation date of the policy.” Section 406.007(c) does not apply to the claimant’s case because the Insurance Carrier Notice of Coverage/Cancellation of Coverage (TWCC-20) in evidence establishes that the insurance policy was canceled by the carrier, not the employer.

Section 406.008(a), which refers to cancellation or nonrenewal of workers’ compensation insurance coverage *by a carrier*, provides as follows:

- (a) [a]n insurance company that cancels a policy of workers’ compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or non-renewal by certified mail or in person to the employer and the commission [Texas Workers’ Compensation Commission] not later than:
 - (1) the 30th day before the date on which the cancellation or non-renewal takes effect; or
 - (2) the 10th day before the date on which the cancellation or non-renewal takes effect if the insurance company cancels or does not renew because of:
 - (A) fraud in obtaining coverage;
 - (B) misrepresentation of the amount of payroll for purposes of premium calculation;
 - (C) failure to pay a premium when due;
 - (D) an increase in the hazard for which the employer seeks coverage that results from an act or omission of the employer and that would produce an increase in the rate, including an increase because of a failure to comply with:
 - (i) reasonable recommendations for loss control; or
 - (ii) recommendations designed to reduce a hazard under the employer’s control within a reasonable period; or
 - (E) a determination made by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the law or would be hazardous

to the interest of subscribers, creditors, or the general public.

The claimant asserts that the effective date of cancellation of the workers' compensation insurance policy is 30 days after the carrier filed the TWCC-20 with the Commission on June 22, 2000, and, thus, his date of injury of _____, is within the coverage period of the insurance policy. The claimant's argument is incorrect. Under Section 406.008(a)(1) and (2), the 30-day notice provision applies to cancellation or nonrenewal upon the *anniversary date* of the insurance policy and the 10-day notice provision applies *if the carrier cancels or does not renew* the insurance at any time for various reasons, such as fraud, misrepresentation, failure to pay a premium, increase in hazard, or by the Commission's determination. The employer's workers' compensation insurance policy was effective from December 25, 1998, to December 25, 2000. However, on June 22, 2000, the carrier canceled the employer's insurance policy before the anniversary date of December 25, 2000, by filing the TWCC-20. The carrier elected a 10-day notice of cancellation with an effective date of cancellation of July 1, 2000, at 12:01 a.m., as provided by Section 406.008(a)(2). The carrier was not obligated to elect a 30-day notice of cancellation.

Accordingly, the claimant is not entitled to coverage for workers' compensation insurance benefits under Section 406.008(a) because his date of injury, _____, is beyond the employer's insurance policy's coverage period, December 25, 1998, to July 1, 2001.

The hearing officer's decision is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge